

EXHIBIT 19

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

3 - - - - - X

4 MICHAEL DONOGHUE and PREMIUM) 20CV6100

MORTGAGE CORPORATION,

Plaintiffs)

5 vs.

Rochester, New York

6 CYNTHIA NOSTRO, DYLAN RANDALL,

DAVID POPHAM and EVERETT

7 FINANCIAL, INC d/b/a SUPREME

LENDING

)

February 9, 2022

3:00 p.m.

8 - - - - - X

CASE MANAGEMENT CONFERENCE

TRANSCRIBED FROM AN ELECTRONIC RECORDING DEVICE

10 TRANSCRIPT OF PROCEEDINGS

11 BEFORE THE HONORABLE MARK W. PEDERSEN

UNITED STATES MAGISTRATE JUDGE

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13 MAUREEN BASS, ESQ.

ALEX FANTAUZZO, ESQ.

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10:49:53 2 of that report, we could tell every borrower that was
10:50:03 3 closed by a former Premium employee who went over to
10:50:11 4 Supreme, and then we would at least have the ability to
10:50:13 5 search our documents and search our computers to see if
10:50:17 6 those individual borrowers were a point of contact with
10:50:20 7 our company as opposed to the Supreme company.

10:50:23 8 MAGISTRATE JUDGE PEDERSEN: Wouldn't that
10:50:24 9 information have been scrubbed by your allegation that
10:50:28 10 the defendants erased it before they left so you
10:50:31 11 couldn't tell.

10:50:32 12 MS. BASS: It might be. It might be, Your
10:50:35 13 Honor, but some of it might also be there.

10:50:37 14 MAGISTRATE JUDGE PEDERSEN: So let's say he
10:50:40 15 reveals a person and a commission, and it's one of your
10:50:42 16 people, and it fits the criteria that you think is the
10:50:45 17 stolen information. How are you going to tell if it's
10:50:48 18 the right client?

10:50:48 19 MS. BASS: So the hope is that some of
10:50:50 20 this -- there would be artifacts in our system that
10:50:53 21 those individuals were introduced to Premium while the
10:50:57 22 employees was still there. There's also a temporal
10:51:00 23 issue here, Your Honor. Loans with expected close in
10:51:03 24 upstate New York of between 60 to 90 days. But if a
10:51:05 25 former Premium loan officer closed a loan at Supreme 30

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10:51:09 2 days in, it probably originated at Premium because it
10:51:13 3 just doesn't move that fast.

10:51:14 4 So we suspect that they'll at least -- at
10:51:17 5 least we'll have a better opportunity to wrap our arms
10:51:20 6 around it. To the extent that there is a, you know,
10:51:22 7 what I would refer to as a clean Supreme client, has no
10:51:26 8 contact with Premium, again, that individual is going to
10:51:31 9 be protected by the confidential designation that these
10:51:35 10 documents had come to us.

10:51:37 11 So this is -- this is the path of least
10:51:42 12 resistance. It's not a nuance discovery issue. This is
10:51:45 13 the path of least resistance for us to try to wrap
10:51:49 14 our -- everyone's arms around the universe. Because
10:51:52 15 with respect to Supreme, I'm not even sure that they
10:51:55 16 know what information the individual loan officers took
10:51:59 17 from Premium when they left.

10:52:01 18 MAGISTRATE JUDGE PEDERSEN: So let's say
10:52:02 19 that you find somebody who went from your firm to his
10:52:05 20 firm, closed the loan within 25 days of coming into the
10:52:10 21 new firm, that's a suspicious transaction?

10:52:12 22 MS. BASS: Yes, your Honor.

10:52:13 23 MAGISTRATE JUDGE PEDERSEN: How do you
10:52:16 24 confirm whether your suspicions are right?

10:52:20 25 MS. BASS: A number of ways. The

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10:52:31 2 anticipation is some day in the near future we'll be
10:52:37 3 able to sit down across from the loan officers who left
10:52:44 4 Premium, and we'll be able to ask those questions. For
10:52:48 5 example, if the borrower's name is Bob Smith, how did
10:52:51 6 Bob Smith become your client? How did Bob Smith become
10:52:55 7 a customer? And we also anticipated doing some notices
10:53:00 8 to admit to the individual defendants.

10:53:06 9 So we have some thoughts on how to get that
10:53:09 10 done, but it's really the only way to get it done.
10:53:12 11 Mr. Cole in his defense yesterday said, I'll give you
10:53:15 12 their W-2s, but their W-2s, while we appreciate -- we
10:53:21 13 appreciate that offer, the W-2s don't help us because it
10:53:26 14 doesn't identify the borrowers.

10:53:30 15 And it's not just commissioned reports. The
10:53:39 16 easiest -- the path of least resistance here -- and
10:53:41 17 again, because we've got the confidential designations,
10:54:09 18 and we knew borrower information was going to be
10:54:14 19 exchanged, it's just for Supreme to tell us the loans
10:54:19 20 that they closed at least within a certain timeframe of
10:54:23 21 our officers leaving our company and going to their
10:54:26 22 employ.

10:54:26 23 And, again, if they -- if they're not -- if
10:54:29 24 there's a reason for them to be excluded from Premium's
10:54:33 25 account damage calculation, that's something that the

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10:54:35 2 folks can fight about at a later time. But right now,
10:54:39 3 we need to get our arms around the universe of what's
10:54:44 4 out there, what's missing, what was closed. We don't
10:54:47 5 have any control of that information. Supreme is the
10:54:51 6 only entity with full control of that information,
10:54:54 7 Supreme and the individuals.

10:54:55 8 And, again, it's the cart before the horse.
10:54:58 9 We'd love to be able to give Mr. Cole a list and say
10:55:01 10 these are the 100 documents, the 100 individuals from
10:55:10 11 our system that we've identified. We just can't do
10:55:13 12 that. So we have to take Mr. Cole's list, we have to
10:55:16 13 take Supreme's list, we have to take Supreme's
10:55:19 14 commission list, and we have to go through them and try
10:55:22 15 to reverse engineer whether those folks were introduced
10:55:28 16 through Premium or whether those are actual Supreme
10:55:49 17 customers that came over after they left.

10:55:52 18 MS. STILLER: And if I could just add a
10:55:55 19 couple of minor points to that. I don't have major
10:55:59 20 points, but the Williamsville office was opened with
10:56:03 21 these originators. So it's not like it's mix and match.
10:56:08 22 They -- they opened the office, so there's a finite --

10:56:09 23 MAGISTRATE JUDGE PEDERSEN: The only people
10:56:12 24 in the Williamsville office are people who came from
10:56:19 25 Premium?

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14:29:11 2 their credit report. That's the very first thing that
14:29:14 3 happens. Then there's a loan application. Then there's
14:29:17 4 a whole bunch of things that go on in order -- you know,
14:29:19 5 in order to close the sale itself that the mortgage
14:29:23 6 company isn't necessarily directly involved in.

14:29:26 7 And then there's the closing with the
14:29:28 8 promissory note. Then you have the lending relationship
14:29:31 9 and the compensation that comes with it. So the very
14:29:34 10 first step in the process is you -- you run a credit
14:29:36 11 report on somebody because otherwise they are not a
14:29:39 12 legitimate prospect.

14:29:39 13 MAGISTRATE JUDGE PEDERSEN: Okay.

14:29:41 14 Mr. Cole: And sometimes the credit score
14:29:44 15 itself is going to mean they're not. But that's the
14:29:47 16 very first thing. We've asked Premium to tell us all of
14:29:50 17 the -- all of the individuals where a credit report was
14:29:53 18 requested within, you know, the time period before the
14:29:57 19 individual defendants left. And they've provided us
14:30:02 20 with 53 names. Okay? Ultimately, that's 53.

14:30:06 21 We believe from what we can tell right now,
14:30:08 22 and it could be that they find more or something, that
14:30:12 23 there were 29 loans that closed with respect to those 53
14:30:16 24 individuals where there was a prior credit pull. The
14:30:19 25 total loan value of the -- of all those loans together

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14:30:23 2 is about \$4.5 million. Okay? That's the loan. And
14:30:29 3 what Ms. Stiller requested compensation from Premium for
14:30:32 4 each loan was 1.5 percent of those loans. Okay?

14:30:36 5 So, based on what we know right now, this is
14:30:40 6 about a \$60,000 case, maybe a \$70,000 case in terms
14:30:45 7 of -- it may get more. Maybe -- maybe they can prove
14:30:46 8 more, but that's what it looks like to us right now that
14:30:49 9 we're spending all this time on.

14:30:51 10 Let's get -- but let me just get to the
14:30:52 11 point. I'm not, as a precondition, requiring that they
14:30:57 12 provide proof of a relationship between Premium and
14:31:02 13 any -- and any Supreme customer as a precondition to
14:31:06 14 discovery, at least not -- not standing alone. Because
14:31:10 15 we're also doing searches outside of those 53, which
14:31:14 16 we're doing right now, and some of which, many of which
14:31:17 17 we've already produced. We're also searching all of
14:31:24 18 the -- all of the pipeline documents.

14:31:25 19 So, let me just insert another -- another
14:31:29 20 piece of terminology in here.

14:31:31 21 MAGISTRATE JUDGE PEDERSEN: So after we're
14:31:32 22 done, I'll be able to get a job at Premium or Supreme?

14:31:36 23 Mr. Cole: Yeah. Right. Well, what I
14:31:37 24 really want to have the Court understand is that we are
14:31:40 25 searching for the same universe of -- of potential

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14:31:44 2 customers as Premium is, and we're -- we're -- as we
14:31:47 3 understand more, we're searching more.

14:31:49 4 But there is -- in terms of -- they want
14:31:52 5 commission reports for the individual defendants. We
14:31:55 6 talked about that yesterday, and I did not say no to --
14:31:59 7 to Ms. Bass on that. I said let me check with the
14:32:01 8 client, and I will -- I will check with the client. We
14:32:04 9 are providing -- we are providing payroll reports
14:32:08 10 anyway, but I am going to check on the commissions.

14:32:10 11 But we've already --

14:32:10 12 MAGISTRATE JUDGE PEDERSEN: Would payroll
14:32:12 13 reports include commissions?

14:32:14 14 Mr. Cole: They -- they would basically be
14:32:16 15 like their pay stubs, Judge.

14:32:16 16 MAGISTRATE JUDGE PEDERSEN: Okay.

14:32:18 17 Mr. Cole: And until I see them, I can't --
14:32:20 18 I can't say whether or not they -- they line up. I
14:32:22 19 understand what they want. They want to line up
14:32:24 20 particular loans and compensation. But here's -- here's
14:32:26 21 the point, there is -- there is this window of relevancy
14:32:30 22 because whatever they took, if they took anything, to
14:32:35 23 Supreme it has a limited --

14:32:36 24 MAGISTRATE JUDGE PEDERSEN: Shelf life.

14:32:38 25 Sure.

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14:32:38 2 Mr. Cole: -- timeline; right? We're
14:32:39 3 talking about 30 to 60 days realistically. We're taking
14:32:44 4 all of the Supreme pipeline reports where they had --
14:32:47 5 where they had potential loans that were going to close
14:32:49 6 in the first five weeks that they were there. And every
14:32:52 7 single -- every single borrower that appear as being for
14:33:00 8 Popham, Randall or Nostro in Supreme's pipeline, we're
14:33:20 9 going to search it, and we're going to provide whatever
14:33:23 10 is there with respect to those. And that's actually
14:33:26 11 better --

14:33:26 12 MAGISTRATE JUDGE PEDERSEN: Five weeks?

14:33:27 13 Mr. Cole: For the first -- for the first
14:33:28 14 five weeks on top of all -- and these are without any
14:33:30 15 reference to anything over at Premium, whether or not
14:33:33 16 they had credit pulls on them or not. We're -- we're
14:33:36 17 going to do the search, and we're going to -- we're
14:33:38 18 going to produce it; okay? If there are other documents
14:33:42 19 that you heard that the plaintiffs have not even
14:33:46 20 reviewed the paper documentation that the individual
14:33:48 21 defendants produced back in November, okay, we've gone
14:33:54 22 through that, and we are going to search any of those.
14:33:56 23 And if anything comes up on Supreme on those -- so
14:34:01 24 that's 60 additional files we're going to -- we'll
14:34:03 25 produce that as well. We'll produce any -- any --

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14:34:05 2 anything in Supreme.

14:34:06 3 MAGISTRATE JUDGE PEDERSEN: You've already
14:34:07 4 produced those files.

14:34:07 5 Mr. Cole: What's that?

14:34:08 6 MAGISTRATE JUDGE PEDERSEN: What do you mean
14:34:09 7 you're going to search them and produce them? You're
14:34:14 8 already producing them now; aren't you?

14:34:14 9 Mr. Cole: We're going to search Supreme's
14:34:26 10 records. Those are the individual defendants' paper
14:34:28 11 files.

14:34:28 12 MAGISTRATE JUDGE PEDERSEN: Okay. Those
14:34:29 13 paper files are potential client files?

14:34:32 14 Mr. Cole: They -- apparently they're --
14:34:35 15 they were perhaps borrowers or potential borrowers. You
14:34:40 16 know, some go back quite a ways, I think, at Premium.
14:34:43 17 So I -- but we're -- it doesn't matter. We're just
14:34:45 18 going to search it. Because that is -- we think between
14:34:48 19 the credit pulls, the pipeline reports of the first five
14:34:51 20 weeks that they're at Supreme, and these -- these
14:34:54 21 potential borrowers, wherever they came from, once we
14:34:58 22 search all of those things, we're -- we're going to
14:35:00 23 provide all the e-mails that mention those and any of
14:35:03 24 those borrowers, which we already have.

14:35:06 25 I mean, they already have a bunch of the

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14:35:08 2 pipeline reports, including a bunch from April and May
14:35:11 3 of 2019. And we're going to produce the credit pull at
14:35:16 4 Supreme, the loan application at Supreme, and the
14:35:18 5 promissory note at Supreme, so they can see whether or
14:35:22 6 not there was actually a loan that was ever funded.

14:35:25 7 And between those -- that universe of
14:35:27 8 documents, it's my belief that we're going to capture --
14:35:31 9 we're going to over include by quite a few any possible,
14:35:35 10 any possible borrowers that came over.

14:35:38 11 But let me just -- let me just address
14:35:40 12 something that's important as well. Because what --
14:35:43 13 what Premium has come in and said is that, well, the
14:35:46 14 individual defendants deleted some files, and we don't
14:35:50 15 know, we don't know. But they did know. They did know;
14:35:52 16 right? They did know some -- at least some of these
14:35:56 17 borrowers. Okay, we -- if you're going to allege that
14:35:58 18 there was some reason that Supreme owes money on a
14:36:01 19 borrower that was allegedly taken -- information was
14:36:06 20 taken from Premium and brought over to Supreme, we --
14:36:09 21 we're entitled to know in discovery what Premium knew
14:36:13 22 and when they knew it.

14:36:15 23 They say the documents -- they say the
14:36:16 24 documents were deleted. All right, what documents?
14:36:18 25 They say that -- you know, were those documents -- were

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14:36:22 2 those documents recovered? We don't -- we don't have
14:36:24 3 any of that stuff. Our -- our production from Premium
14:36:29 4 is miniscule as it relates to documents other than
14:36:33 5 e-mails. And I'm not -- I don't want to go into all of
14:36:36 6 it because I think Ms. Bass and I still have some more
14:36:40 7 talking to do about that, and I don't want to -- I don't
14:36:43 8 really want to get the Court involved until it's
14:36:46 9 absolutely necessary.

14:36:47 10 But we have questions about the way their
14:36:50 11 electronic documents and e-mails were produced, because
14:36:53 12 there were many, many documents that were not produced
14:36:56 13 that were attached to e-mails, and we're working through
14:37:01 14 why that was. And I think, hopefully, we can come to
14:37:03 15 some combination on it.

14:37:03 16 But this is a -- this is a give and take
14:37:09 17 thing, Judge. I know you hear that we've been here
14:37:23 18 because the plaintiffs have requested your consideration
14:37:25 19 of their issues up to now. But they're not the only
14:37:28 20 issues out there. And -- and Supreme intends to
14:37:31 21 continue to cooperate in discovery, reasonably
14:37:36 22 cooperate, and -- but we'll have our own issues as well.

14:41:11 23 MAGISTRATE JUDGE PEDERSEN: So I'm curious,
14:41:18 24 what is the plaintiff asking for that Supreme would
14:41:24 25 prefer not to produce?

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14:41:29 2 Mr. Cole: It's -- there really is not a
14:41:31 3 lot, except for we've already produced -- we're already
14:41:34 4 overinclusive in our production of e-mails and other
14:41:37 5 documents relating to borrowers that have no connection
14:41:42 6 that we can see whatsoever to -- to Premium. And we
14:41:47 7 just don't want to go beyond that. We think we've --
14:41:50 8 we've already produced documents, many documents we
14:41:54 9 believe that come from a list that was provided to us in
14:41:58 10 mediation because we had to provide our discovery before
14:42:02 11 Premium produced their discovery. And as far as we can
14:42:06 12 tell, many of those borrowers in the mediation list had
14:42:10 13 no credit pulls, no connection to Premium and therefore,
14:42:14 14 there's a lot of -- there's a lot of documents that have
14:42:19 15 already been produced under a confidentiality
14:42:30 16 designation that we don't think has any connection with
14:42:33 17 this case at all.

14:42:34 18 So, we want -- first of all, we want to be
14:42:37 19 efficient because we've already gone back a few times,
14:42:40 20 and we want to -- we just want to make sure there's an
14:42:42 21 understanding of what we're going to go back and search
14:42:45 22 and produce. And we don't want to be accused of doing
14:42:48 23 things that we haven't done. We want to be complete,
14:42:51 24 and we don't want to go over things over and over again
14:42:54 25 because there's an allegation that somebody destroyed a

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15:03:39 2 and to me, it would have resolved some of the issues
15:03:42 3 with respect to what Premium's reporting obligation is
15:03:46 4 because I can't imagine that anybody could take the
15:03:49 5 position that we can't take documents that were
15:03:52 6 improperly taken from us and use those to meet our
15:03:57 7 reporting obligation.

15:03:58 8 But be that as it may, it's my understanding
15:04:03 9 that -- that the individual defendants had indicated
15:04:06 10 that there are some other documents that can be
15:04:09 11 examined. We tried to set up a time to examine them.
15:04:13 12 We still have not seen what's in the banker's box. But
15:04:17 13 for Mr. Cole to say, you know, this is -- this is what I
15:04:21 14 think is relevant and to use the May 2nd letter to try
15:04:26 15 to allege what damages are is disingenuous in the least,
15:04:32 16 whatever it is, it's a very disingenuous.

15:04:37 17 MAGISTRATE JUDGE PEDERSEN: Ms. Bass, you're
15:04:38 18 saying that there are reports that Supreme is required
15:04:40 19 to file with regulatory agencies that you would like to
15:04:44 20 copy?

15:04:46 21 MS. BASS: Yes. Yes, Your Honor. They're
15:04:53 22 called LARs. It's Loan Application Reports. So each --
15:04:54 23 each mortgage banker who practices in New York has to
15:04:57 24 complete these documents. Some of the information on
15:04:59 25 the LARs is publically available. So we're able to get

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15:05:03 2 some of the information. But what's missing from the
15:05:06 3 LARs -- for example, we can download Supreme's LARs, but
15:05:10 4 what's missing from that is the borrower name and the
15:05:13 5 loan officer who originated the loan.

15:05:15 6 MAGISTRATE JUDGE PEDERSEN: And that would
15:05:16 7 give you the information you need to figure out what, if
15:05:18 8 anything, you believe originated at Premium and was
15:05:22 9 taken over to Supreme?

15:05:23 10 MS. BASS: That's correct, yes. If we
15:05:27 11 had -- if we had essentially --

15:05:27 12 MAGISTRATE JUDGE PEDERSEN: And for what
15:05:28 13 period of time are you looking for LARs?

15:05:32 14 MS. STILLER: We -- until we received the
15:05:35 15 text messages, we did not know, and we still don't know,
15:05:39 16 the extent of what was taken.

15:05:42 17 MAGISTRATE JUDGE PEDERSEN: Certainly, it's
15:05:43 18 not for five years.

15:05:44 19 MS. STILLER: I'm sorry?

15:05:45 20 MAGISTRATE JUDGE PEDERSEN: You're not
15:05:46 21 looking for five years?

15:05:47 22 MS. STILLER: It hasn't been five years. So
15:05:49 23 we're definitely looking through 2019 and 2020, and it
15:05:53 24 may be as far as 2021. I don't know what they did with
15:05:58 25 the information. We -- again, we have no -- somehow the

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15:06:03 2 pipeline -- names of Premium clients jumped from Premium
15:06:07 3 to a Supreme pipeline without there being any
15:06:11 4 documentation that we've seen. And somehow there were
15:06:17 5 loans that were closed, including under a totally
15:06:22 6 different loan originator, that -- that some we can
15:06:30 7 match names, some we can't. We have no information
15:06:33 8 about the genesis.

15:06:35 9 And to simply say -- you know, it's very
15:06:38 10 easy for --

15:06:40 11 MAGISTRATE JUDGE PEDERSEN: Let me ask a
15:06:41 12 question. If you had the LARs reports for 2019, knowing
15:06:44 13 that these people left Premium's employment on April
15:06:49 14 25th, 2019, if you had the LARs reports for all of 2019
15:06:54 15 that they've already produced to the regulatory agency,
15:06:57 16 that would contain the borrower's name, the seller's
15:07:00 17 name, if you will, the employee who sold that and the
15:07:03 18 date, that would be enough to let you know what's left
15:07:07 19 in your system to determine if you think the loan closed
15:07:12 20 from information taken from Premium?

15:07:15 21 MS. STILLER: Not really, Your Honor,
15:07:16 22 because there's also some -- a prospective client list
15:07:24 23 and other information that was taken. So if it's a loan
15:07:27 24 in progress --

15:07:27 25 MAGISTRATE JUDGE PEDERSEN: If I took

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15:07:28 2 information on a prospective client list and never

15:07:31 3 closed a loan with the prospective clients, even though

15:07:35 4 I tried to, would that amount to any damages?

15:07:38 5 MS. STILLER: On our prospective, they took

15:07:40 6 our prospective client list and may have closed those

15:07:47 7 clients.

15:07:47 8 MAGISTRATE JUDGE PEDERSEN: Right. And you

15:07:47 9 would know -- oh, I see, you're looking for the

15:07:49 10 prospective client list as well.

15:07:51 11 MS. STILLER: Well, we know -- we don't know

15:07:53 12 everyone who should have been on our prospective client

15:07:57 13 list. We do know that they copied and admit that they

15:08:00 14 copied.

15:08:01 15 MAGISTRATE JUDGE PEDERSEN: So those

15:08:02 16 prospective client lists might be within the banker's

15:08:06 17 box. We don't know.

15:08:07 18 MS. STILLER: We don't know. We don't know

15:08:09 19 what's within the -- those documents.

15:08:11 20 MAGISTRATE JUDGE PEDERSEN: So Mr. Cole and

15:08:12 21 Mr. Calabrese, these LARs reports, what would be the

15:08:16 22 drawback to giving them 2019's LARs reports that you

15:08:19 23 filed with a regulatory agency, especially since we've

15:08:23 24 got a confidentiality agreement?

15:08:30 25 Mr. Cole: Judge, that's a really good

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15:08:33 2 question. What -- what happens is that they're -- LARs
15:08:33 3 reports didn't even come up until yesterday. That --
15:08:36 4 that is not a name that's been mentioned to me until
15:08:39 5 yesterday's conference, and even then, there wasn't a
15:08:42 6 request that we produce it. So is it possible that that
15:08:46 7 is a -- a solution? I guess it's possible.

15:08:46 8 MAGISTRATE JUDGE PEDERSEN: It sounds like
15:08:47 9 it might be a shortcut.

15:08:49 10 Mr. Cole: Well, it -- it might -- it might
15:08:50 11 be. Here's what -- essentially, what counsel for -- for
15:08:54 12 the plaintiffs is arguing their case over and over again
15:08:57 13 and going over evidence that we produced, either the
15:09:01 14 individual defendants or Supreme has produced in
15:09:03 15 litigation, in order to hammer home points without ever
15:09:07 16 making a specific request for anything in terms of
15:09:10 17 additional discovery.

15:09:11 18 And what we -- literally, other than the
15:09:14 19 commission reports, which we discussed yesterday and was
15:09:17 20 not an issue that even I believe really requires Your
15:09:20 21 Honor's involvement at this point, because I haven't
15:09:24 22 said no; all right? I'm going to go back.

15:09:27 23 And as far as this LARs report, honestly, I
15:09:31 24 don't have enough information because I haven't talked
15:09:33 25 to my client about the LARs report. That's something

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15:09:35 2 that if Ms. Bass had said to me yesterday or before,
15:09:39 3 hey, these LARs reports are getting -- we want them and
15:09:42 4 you should produce them, and I would have gone back to
15:09:45 5 my client. What's the -- you know, are we going to
15:09:49 6 produce them? What are they, first of all. Because,
15:09:52 7 honestly, I haven't had that conversation.

15:09:54 8 But we'll be here, I'm sorry to say this, in
15:09:57 9 two weeks with more generalized complaints about what it
15:10:01 10 is that we have and haven't produced and the positions
15:10:04 11 we're taking when, honestly, all I'm trying to do is
15:10:08 12 accommodate the -- any kind of tie that Premium has to a
15:10:12 13 particular borrower, and -- and then do an appropriate
15:10:16 14 search.

15:10:17 15 The LARs report? Yeah, maybe. So, what --
15:10:20 16 what I want to make clear is, I'm happy to go back, and
15:10:23 17 I've always been happy to go back to my client and talk
15:10:26 18 to them about anything we haven't produced. And so far,
15:10:30 19 there really hasn't -- there hasn't been much.

15:10:32 20 We do have both -- going both ways,
15:10:34 21 financial information that my client is hesitant to
15:10:37 22 produce without an "attorney eye's only" addendum to
15:10:41 23 the -- to the stipulated protective order, which we
15:10:44 24 proposed back in December, and they haven't agreed to.

15:10:47 25 But, you know, we can get into that too, or

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15:10:50 2 we could talk about it because they're -- both sides
15:10:53 3 want the same information from the other. We want it.
15:10:56 4 Because they -- they're going to -- eventually, if they
15:10:58 5 prove any of their claims against Supreme, they're going
15:11:01 6 to have to prove damages. And if any of those damages
15:11:04 7 are lost profits, they're going to have to provide
15:11:07 8 financial information in order to -- in order to justify
15:11:10 9 it.

15:11:10 10 So I'm happy, Judge, to go back and ask my
15:11:13 11 client about the LARs -- LARs reports for 2019 with
15:11:17 12 respect particularly to these, you know, to the -- any
15:11:21 13 loans closed by the individual defendants. I do think
15:11:23 14 that's casting a much, much broader net. Because any of
15:11:27 15 these loans, in all likelihood, are going to be closed
15:11:30 16 in the first, you know, in the first three or four
15:11:33 17 months. Otherwise, the rest of it is -- is irrelevant.

15:11:37 18 But if it -- if it got us past another
15:11:40 19 conference with Your Honor, I would -- I would -- I'm
15:11:43 20 certainly going to have the conversation. But going the
15:11:46 21 other way, we also -- we don't have any -- we don't have
15:11:50 22 any information from them about this investigation that
15:11:54 23 they did or who they know, who they knew back in 2019,
15:11:58 24 who they found out that documents were taken, we don't
15:12:01 25 have any clue.

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15:12:03 2 They brought in a forensic -- they brought
15:12:05 3 in a forensic consultant to do that. We don't have any
15:12:09 4 of their reports. They communicated with the DA's
15:12:11 5 office. We don't have any of that information except
15:12:13 6 for the actual documents. We were requesting more of
15:12:16 7 that. We want to know when they figured out the
15:12:20 8 customers that allegedly were solicited or taken and
15:12:25 9 what they did about it in order to mitigate damages, if
15:12:28 10 they -- if they did, and whether or not they have
15:12:30 11 information that these customers left and it had nothing
15:12:34 12 to do with any wrongdoing by individual defendants.

15:12:36 13 We're entitled to all of that stuff going
15:12:38 14 back to 2019 when this first happened, and we've got
15:12:43 15 none of it; okay? So we have the same -- and -- and
15:12:44 16 this isn't something that I think is ripe for the
15:12:47 17 court's really consideration at this point, but I want
15:12:50 18 to -- because we still have some more talking to do
15:12:54 19 about it. But they're -- everything that they're
15:12:56 20 bringing up from the plaintiff's point of view, we have
15:12:59 21 it going back the other way.

15:13:01 22 And, you know, I'm -- we're -- we're
15:13:03 23 cooperating. We believe that the idea of bringing every
15:13:09 24 single issue to the court is a -- is a waste of Your
15:13:11 25 Honor's time.

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15:13:12 2 MAGISTRATE JUDGE PEDERSEN: So would you
15:13:13 3 want their LARs reports for 2019 as well?

15:13:17 4 Mr. Cole: No, that -- we're assuming
15:13:19 5 anything that they closed in 2019 is not something that
15:13:23 6 the customers then came and closed another -- another
15:13:25 7 loan at Supreme. So we don't need that exact -- we
15:16:05 8 don't need that exact document. We just --

15:16:06 9 MAGISTRATE JUDGE PEDERSEN: What are you
15:16:07 10 looking at -- what are you requesting from them?

15:16:17 11 Mr. Cole: We're requesting the documents as
15:16:18 12 to what they found out about these customers who
15:16:21 13 alledgedly were solicited and all the information they
15:16:23 14 have on when credit reports were pulled or loan
15:16:26 15 applications were filed, what other evidence they have
15:16:28 16 that any of the individual defendants did any -- that
15:16:32 17 wrongdoing led to any -- any person coming over to
15:16:39 18 Supreme.

15:16:39 19 MAGISTRATE JUDGE PEDERSEN: So essentially,
15:16:40 20 the information they gave to the district attorney?

15:16:44 21 Mr. Cole: Well, that had to do -- certainly
15:16:44 22 that to the extent that there is other information about
15:16:46 23 what -- what files -- you know, they claim that files
15:16:49 24 were deleted. Were all of those files recovered? What
15:16:53 25 about the files in their Encompass loan system, which is

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15:16:56 2 the exact same loan system that Supreme uses? Were
15:17:00 3 those -- what of those were deleted, and what were
15:17:03 4 recovered? In -- for what -- what particular customers
15:17:06 5 were there deletions?

15:17:08 6 MAGISTRATE JUDGE PEDERSEN: So you're
15:17:08 7 looking for their expert's report back to them on what
15:17:13 8 he or she found in looking at the hard discs?

15:17:16 9 Mr. Cole: I think that would be -- I think
15:17:16 10 that's something that we would be definitely entitled to
15:17:20 11 because we're not getting it from any -- anywhere else.
15:17:22 12 But right now, I think they're -- what Ms. Bass has said
15:17:27 13 is, an additional production from them is forthcoming
15:17:31 14 and if those provide more of those details, then, you
15:17:34 15 know, I'm not sure we do have an issue.

15:17:37 16 But right now, we -- we don't have any real
15:17:40 17 time information back in 2019 about what they knew about
15:17:44 18 particular files being deleted or customers being
15:17:51 19 solicited or taken improperly from Premium. There has
15:17:54 20 to be some connection, Judge, between a Premium customer
15:17:58 21 and Supreme in order for there to be legitimate
15:18:01 22 discovery. And -- so, you know, we're taking a slightly
15:18:05 23 broader view than that, but -- and it's hard. They do
15:18:10 24 have an obligation. I'm not saying before we produce
15:18:14 25 documents, but as part of their discovery obligations,

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15:19:43 2 to tell us what information they have about these
15:19:46 3 customers for which they're seeking damages from
15:20:15 4 Supreme.

15:20:15 5 MS. MCCARTHY: And, Your Honor, in addition
15:20:29 6 to that, we've -- and Mr. Cole made this point already.
15:20:41 7 We've -- we've asked for more broadly financial
15:20:43 8 information from Premium that we haven't received,
15:20:46 9 including the commission reports for the year that
15:20:50 10 the -- that the defendants left, the year of the end of
15:20:52 11 their employment, 2019, which is relevant in part to
15:20:56 12 their counterclaims for unpaid commissions. And we've
15:21:00 13 yet to see that.

15:21:01 14 And, frankly, we've also asked for loan
15:21:05 15 applications generated, the number of clients serviced
15:21:07 16 by Premium and related financials because all of that is
15:21:10 17 relevant to, again, their counterclaims and -- and what
15:21:13 18 was closed by the individual defendants before they left
15:21:18 19 Premium. Because, frankly, they had a vested interest
15:21:22 20 in having loans closed at Premium because then they were
15:21:26 21 expected to be paid the commissions on those loans.

15:21:29 22 In addition to that, they can't simply
15:21:31 23 choose to delay an application once it started at
15:21:34 24 Premium and then jump it over, to use opposing counsel's
15:21:38 25 words, to Supreme. Because once the process gets going,

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15:21:42 2 you can't simply ask the borrower to delay a closing on
15:22:00 3 their home because you're transferring -- because you're
15:22:02 4 changing employment. So these clients didn't simply
15:22:06 5 jump from Premium to Supreme.

15:22:08 6 In some cases they chose to call up our
15:22:12 7 clients and say, hey, I want -- I have a house now, I
15:22:15 8 want to close on it. And then our clients said, well,
15:22:18 9 we're not at Premium anymore, and some of those clients
15:22:22 10 then said, well, I want to follow you. And we have
15:22:24 11 already produced documentation from those clients saying
15:22:28 12 we would like to follow you and withdraw our
15:22:32 13 applications from Premium. We've disclosed that.

15:22:33 14 So there's no mystery on how certain
15:22:37 15 individuals were at Premium and then at Supreme. They
15:22:39 16 didn't just jump there magically.

15:22:42 17 MS. BASS: Perhaps, Your Honor --

15:22:42 18 MAGISTRATE JUDGE PEDERSEN: I keep hearing
15:22:44 19 over and over again I'll show you mine if you show me
15:22:47 20 yours first.

15:23:00 21 MS. BASS: No. I mean, Your Honor, I'm
15:23:02 22 surprised to hear the reporting from the meet and confer
15:23:04 23 yesterday. I mean, a lot of what the -- in particular,
15:23:05 24 the individual defendants raised for issues, and it was
15:23:08 25 basically we think there should be a document, is there

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15:23:11 2 one? And the answer was no, as confirmed by e-mail
15:23:15 3 today.

15:23:16 4 For example, they're looking for a letter
15:23:17 5 from Mr. Donoghue to the district attorney's office with
15:23:21 6 respect to the charges that were brought. There's not a
15:23:24 7 letter from Mr. Donoghue to the district attorney's
15:23:26 8 office.

15:23:27 9 MAGISTRATE JUDGE PEDERSEN: How did
15:23:27 10 information get to the district attorney?

15:23:29 11 MS. BASS: Exactly. And, again, it was a
15:23:31 12 phone call. It was a meeting, as I told counsel
15:23:34 13 yesterday. The district attorney said come down to the
15:23:37 14 office. They brought the stack of documents. We
15:23:39 15 literally have them saved on a disc, and we produced
15:23:43 16 every single one of them. We didn't assert privilege
15:23:55 17 with respect to a single document. The entire disc was
15:23:58 18 produced.

15:23:59 19 And, again, you know, sometimes in these
15:24:01 20 situations when you think there should be a document,
15:24:03 21 and they're telling you there are not, then depose
15:24:07 22 Mr. Donoghue. Ask him if he drafted a letter. Ask him
15:24:11 23 if there's a letter. I can't -- I can't give them
15:24:13 24 something that doesn't exist.

15:24:14 25 So I'm really surprised to hear today with

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15:24:17 2 respect to opposing counsel's report of the meet and
15:24:20 3 confer yesterday, because we were very open and very
15:24:23 4 confirming of what we have and what we don't have. With
15:24:26 5 respect to those issues, though, we're not hiding the
15:24:30 6 ball. You know, Mr. Cole is right. Plaintiffs have the
15:24:33 7 obligation to prove the damages here. But how do I say
15:24:36 8 to Mr. Cole our damages are blank because this is how
15:24:41 9 many loans were taken if I can't decide and determine
15:24:44 10 how many loans were taken?

15:24:45 11 And what I would -- what I would propose, if
15:24:47 12 the LARs are not an issue and the commission reports are
15:24:51 13 not an issue, that was something that Mr. Cole was going
15:25:03 14 to consult with counsel, as perhaps we could take a
15:25:08 15 15-minute break, if that's the watershed here, it
15:25:10 16 certainly is for us, perhaps we could take a 15-minute
15:25:13 17 break and Mr. Cole could attempt to get his client on
15:25:16 18 the phone. Because I don't -- I don't know how these
15:25:18 19 would be an objectionable thing to produce given that
15:25:26 20 we're doing it under a confidential, and they would not
15:25:43 21 be shared with any other party.

15:25:46 22 Mr. Cole: Judge, respectfully, I'm not
15:25:47 23 going to be put on spot for fifteen minutes with a
15:25:50 24 client that I don't even know that I can get in touch
15:25:52 25 with in fifteen minutes on that -- on that kind of thing

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15:25:56 2 when I don't even know what a LARs is. I -- I
15:25:59 3 apologize. But I would -- I'm happy to cooperate
15:26:01 4 with -- with plaintiffs on all -- all aspects of
15:26:07 5 discovery, not just what Premium -- not what Supreme has
15:26:09 6 to produce in addition to what everything else they've
15:26:12 7 had to produce.

15:26:13 8 I'm happy, just like with the commission
15:26:15 9 reports that we talked about yesterday, LARs that we did
15:26:18 10 not talk about yesterday, to go back to my client and
15:26:22 11 see whether or not there's an interest in producing some
15:26:28 12 or all of that report with respect to 2019. But I need
15:49:53 13 to be more informed myself before I can go and talk to
15:49:56 14 my client about it.

15:49:57 15 MS. BASS: In October of last year, the
15:49:59 16 document demands were issued, and they requested
15:50:02 17 information relating to loans that were closed by the
15:50:08 18 Williamsville office, financial information, as well as
15:50:15 19 information about commissions paid in connection with
15:50:18 20 those loans. So this isn't like a shock. This isn't a
15:50:22 21 surprise. This is -- this is a discussion that we're
15:50:25 22 having in connection with a meet and confer.

15:51:09 23 There are LARs. They came up at the last
15:51:12 24 meeting that we had before Your Honor. Everybody knows
15:51:16 25 these issues have been out there. This is the rock.

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15:51:19 2 This is the rock we can't get past. And plaintiffs
15:51:21 3 can't take piecemeal discovery of what defendants think
15:51:25 4 are relevant based on their review of what the
15:51:29 5 individual defendants, who we already don't trust, tell
15:51:32 6 them is relevant. We can't accept that piecemeal.

15:51:37 7 So perhaps, Your Honor, if -- you know, we
15:51:37 8 don't want to be in front of Your Honor with all due
15:51:40 9 respect.

15:51:45 10 MAGISTRATE JUDGE PEDERSEN: What?

15:51:46 11 MS. BASS: You know, perhaps the thing to do
15:51:55 12 here is to put this on another short leash so that
15:51:59 13 Mr. Cole can have an opportunity to discuss LARs with
15:52:02 14 his client. They certainly are required to be reported
15:52:04 15 and created for the regulatory agencies. So they
15:52:07 16 certainly exist. We know those documents are out there.
15:52:10 17 We know those documents certainly have doc -- references
15:52:12 18 to loans that we believe are an issue and are relevant
15:52:17 19 for purposes of disclosure.

15:52:18 20 Some of those names, some of those loans
15:52:21 21 have even come up in their discovery that they've
15:52:24 22 already produced. So there can't be an argument it's
15:52:27 23 not relevant. So perhaps what we do is we adjourn for a
15:52:30 24 week in hopes that the commission issue and the LARs can
15:52:35 25 be resolved. I'd certainly be happy to work with --

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15:52:45 2 with both opposing counsel on issues with documents they
15:52:48 3 think should be there that just do not exist because
15:52:51 4 they were never created.

15:52:52 5 And once we have the universe of documents,
15:52:54 6 we'll be able to highlight our damages. We'll be able
15:52:58 7 to say this is how many loans were closed over there
15:53:01 8 that should have been closed over here. This is the
15:53:04 9 money we should have made on them. This is our expenses
15:53:07 10 that we're taking out. We'll be able to give them all
15:53:09 11 the information that they want and be able to move this
15:53:11 12 case forward to trial.

15:53:13 13 MAGISTRATE JUDGE PEDERSEN: So what I'm
15:53:14 14 hearing is that if your client, Mr. Cole and
15:53:17 15 Mr. Calabrese, produce the LARs report, and if you have
15:53:21 16 one, the prospective client list that maybe the
15:53:25 17 individual defendants have, maybe they don't, perhaps
15:53:28 18 it's in the banker's box, who knows, as well as the
15:53:31 19 commission reports, those three items, that we would be
15:53:34 20 significantly further along the way.

15:53:36 21 And I understand you've got to find out what
15:53:38 22 is in a LARs report, what might be something that your
15:53:41 23 client doesn't want disclosed out of that. But since
15:53:45 24 I'm supposed to take into consideration the burden and
15:53:47 25 expense of discovery, and if these reports truly already

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15:53:51 2 exist, it seems to me the shortcut here is to produce
15:53:55 3 the reports and let the plaintiffs go through and decide
15:53:58 4 what they think constitutes part of their claim.

15:54:04 5 Mr. Cole: I -- I hear you, Judge, and I'm
15:54:06 6 happy to have that discussion on the LARs report with my
15:54:08 7 client. As far as a customer list, I don't -- I've --
15:54:11 8 that's new to me in terms of a -- any kind of customer
15:54:15 9 list. We've searched the files by any -- with the names
15:54:21 10 that we're aware of. And as I've said, those names are
15:54:25 11 probably way over inclusive.

15:54:27 12 Anything that came up, any hit with those
15:54:32 13 names, was produced. If there was a customer list, that
15:54:36 14 would -- presumably would have come up with it. I'm
15:54:39 15 really unfamiliar with what they're talking about, and
15:54:42 16 I'm not aware of the individual defendants having
15:54:45 17 produced a customer list.

15:54:47 18 MS. BASS: And the commission reports, Your
15:54:49 19 Honor.

15:54:49 20 MAGISTRATE JUDGE PEDERSEN: Yes, he's
15:54:50 21 already agreed he's going to talk to his client about
15:54:53 22 those.

15:54:53 23 MS. BASS: I'm sorry. I didn't hear you.

15:55:00 24 MAGISTRATE JUDGE PEDERSEN: So you're going
15:55:01 25 to talk with your client, Mr. Cole, about producing all

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15:59:09 2 commission reports.

15:59:20 3 MS. STILLER: No, the prospective -- the
15:59:21 4 prospective -- he has equal ability, as we do, to read
15:59:25 5 the text messages, and to know that the text messages
15:59:29 6 reflect that the individual defendants agreed to and did
15:59:35 7 copy 1003s, which are the prospective client -- we asked
15:59:43 8 for all of this stuff. But -- and we've had several
15:59:47 9 meets and confers. And we've had meets and confers in
15:59:52 10 which we specifically, many in which we specifically
15:59:55 11 talked about commissions probably way back in December,
16:00:00 12 I think.

16:00:01 13 So, you know, we're not going to know -- I
16:00:04 14 don't know all the documents that they have, and I
16:00:06 15 certainly don't know all the advertising and the
16:00:10 16 contacts that they did and things of the sort. That's
16:00:14 17 some information that we've requested in -- in
16:00:18 18 discovery.

16:00:18 19 But we -- we asked for all of this going
16:00:22 20 back to October of 2020. There have been three
16:00:26 21 productions, I believe, from Supreme and two -- at least
16:00:32 22 two meet and confers on this, I believe.

16:00:36 23 Am I right, Maureen?

16:00:36 24 MS. BASS: Yes.

16:00:37 25 MS. STILLER: And it's not forthcoming.

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16:15:35 2 resolve it in preparation for the 25th?

16:15:37 3 MAGISTRATE JUDGE PEDERSEN: Let me know what
16:15:39 4 it is that you have unresolved.

16:15:41 5 MS. STILLER: Thank you.

6 * * *

7 CERTIFICATE OF REPORTER

8
9 I certify that the foregoing is a correct transcript
10 of the record to the best of my ability of proceedings
11 transcribed from the audio in the above-entitled matter.

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